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Pesticide Laws and Regulations

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This NebGuide provides general information on federal and state laws and regulations regarding pesticide applicator certification, licensing and pesticide use in Nebraska.

A succession of federal laws has addressed pesticides and their use in the United States. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) was first approved in 1947 and has undergone several revisions. FIFRA and the Nebraska Pesticide Act, which was enacted in 1993, are the principal statutes governing the use of pesticides in Nebraska.

FIFRA

Congress intended FIFRA to protect both people and the environment by providing for the controlled use of pesticides. The law encompasses pesticide registration, classification, labeling, distribution, use, disposal and other topics. Those sections pertaining to pesticide users broadly address key issues: user categories, recordkeeping, certification and penalties for violations.

General Provisions

FIFRA requires pesticide manufacturers to register each of their products with the U.S. Environmental Protection Agency (EPA) either as a general use (GUP) or restricted use (RUP) pesticide with the exception of a few minimum-risk active ingredients. In some cases, a pesticide's active ingredient may be used in both general and restricted use pesticides.

Restricted use pesticides can be used only by certified applicators (or noncertified individuals working under the direct supervision of a certified applicator). In most cases, anyone can use general use pesticides according to the label without being certified. FIFRA defines two types of certified applicators: private applicators and commercial applicators.

From a FIFRA perspective, a private applicator is defined as a certified applicator who uses or supervises the use of a restricted use pesticide to produce an agricultural commodity on property he or she owns or rents, on an employer's property, or on the property of another person IF there is no compensation other than trading personal services.

FIFRA defines a commercial applicator as any person who uses or supervises the use of restricted use pesticides for any purpose other than as provided in the definition of a private applicator.

Federally registered product labels contain sections which address personal protection, protection of others and protection of sensitive sites, ground water and endangered species. Some pesticide labels direct an applicator to protect endangered species (plant or animal) as per an online county bulletin. The online bulletin is considered a legal extension of the container label and must be followed.

Nebraska Pesticide Act and Regulations

The Nebraska Pesticide Act was enacted in 1993. It designates the Nebraska Department of Agriculture (NDA) as the lead agency responsible for administering the Nebraska Pesticide Act under FIFRA and gives several other state agencies specific responsibilities. The act requires registration of pesticides sold in Nebraska and state licensing of persons wishing to purchase and use any restricted and, in certain situations, general use pesticides. It identifies the University of Nebraska Lincoln–Extension as responsible for providing training for private, commercial and noncommercial applicators.

Nebraska's pesticide law and related regulations differ from that of FIFRA in several aspects. One difference is that a pesticide license is required for applicators AND mixer/loaders of all restricted use pesticides. The application of general use pesticides by a commercial applicator in the Ornamental and Turf and Structural categories requires a pesticide license. Under the Nebraska Pesticide Act, persons wishing to be licensed as private applicators are not required to take an examination. It also stipulates that the minimum age for licensing is 16. Custom farmers are classified as commercial pesticide applicators. Informally known as the chemical trespass regulation, pesticides can only be applied to property with the permission of the legal owner or tenant. No recommendation can be made that is contrary or inconsistent to the pesticide label.

Nebraska law also creates a noncommercial classification of applicators. This classification includes any person who applies restricted use pesticides "...only on lands owned or controlled by his or her employer or for a governmental agency

or subdivision of the state.” In addition, any employee of a political subdivision of the state applying pesticides (GUP or RUP) for vector control must obtain a license (Public Health category) prior to applying such pesticides and are classified by NDA as noncommercial applicators. A pesticide applicator applying pesticides for hire on behalf of a governmental agency must be classified as a commercial applicator in the Public Health category.

All pesticide licenses are good for a maximum of three years unless revoked by NDA. In order to renew a license, a state license fee must be paid to the NDA before the license expires for private and commercial applicators. Nebraska’s law and regulations set the fee for commercial applicators at \$90 and \$25 for private applicators. This fee is payable to the NDA and must be paid before the license is granted in order to purchase and use restricted use pesticides or general use pesticides as identified above. There is no state license fee for noncommercial applicators.

Pesticide Applicator Licensing

Persons seeking initial certification (licensing) as commercial or noncommercial pesticide applicators in Nebraska can attend training provided through UNL Extension and/or complete self-study of training materials. In either case, the candidate must successfully pass both a general standards core exam and one or more specific category examinations. A pesticide license is valid for three years. To become recertified and then eligible to pay the state license fee to obtain the pesticide license, the person must attend either a UNL Extension recertification training program or an equivalent training program approved by NDA. A person wishing to recertify by training must attend that training before the license expires. A commercial/noncommercial applicator also may recertify by examination.

To become recertified as a private applicator, individuals can:

1. Complete an approved training program provided by UNL Extension
2. Complete a self-study workbook provided by UNL Extension
3. Voluntarily complete and pass an examination administered by the NDA

Then, the private applicator is eligible to pay the state license fee to obtain the pesticide license. The same options also apply to recertification, which is required every three years.

Commercial and Noncommercial Pesticide Applicator Categories

1. Agricultural Pest Control — Plant
- 1a. Fumigation of Soil
2. Agricultural Pest Control — Animal

3. Forest Pest Control
4. Ornamental and Turf Pest Control
5. Aquatic Pest Control
- 5s. Sewer Use of Metam Sodium
6. Seed Treatment
7. Right-of-way Pest Control
8. Structural/Health Pest Control
- 8w. Wood Destroying Organisms
9. Public Health Pest Control
10. Wood Preservation
11. Fumigation
12. Aerial Pest Control (Includes Ag Pest Control Plant category)
14. Wildlife Damage Control

Two subcategories (Regulatory and Demonstration/Research) expand the scope of an applicator’s primary category(ies) such as Agricultural Pest Control — Plant or Ornamental and Turf Pest Control. The Wildlife Damage Control category (14) covers the chemical control of vertebrate pests such as prairie dogs in pastures or rangeland, coyotes in pastures/holding pens, moles and ground squirrels in lawns/parks/golf courses, etc. The management of vertebrate pests invading structures with pesticides is in the Structural/Health Pest Control category.

Direct Supervision

In general, a person must be licensed to use a restricted use pesticide. An individual required to be licensed may use such pesticides as an unlicensed applicator for a period of up to 60 consecutive days beginning on the first date of the pesticide application. Unlicensed applicators applying GUPs in the Ornamental and Turf category, the Structural category and custom applicators in the Public Health category also may use this exemption for license. The 60-day exemption is allowed once in a lifetime for the applicator. In order to use pesticides as an unlicensed applicator, the individual or his or her employer shall apply to the department for an applicator license within 10 days of making the first pesticide use. Both the licensed and unlicensed applicator are liable for any violations. The licensed applicator, as a supervisor, must possess the correct license category for the work being done and must do the following:

1. Determine the level of experience and knowledge of the unlicensed person in the use of a pesticide
2. Provide verifiable (documented) detailed guidance on how to conduct each pesticide use performed under his/her direct supervision
3. Accompany the unlicensed person to at least one site which typifies each different pesticide use the unlicensed individual performs
4. Be in direct two-way communication with the unlicensed applicator during the application
5. Be able to be physically on the pesticide use, storage or mixing/loading site, if needed, within three hours of time

Recordkeeping Requirements — Commercial and Noncommercial Applicators

Nebraska Department of Agriculture regulations require commercial and noncommercial applicators of restricted use pesticides and commercial applicators applying general use pesticides for structural pest control to record the following:

1. Name and address of the person for whom the pesticide was applied
2. Name, address and pesticide license number of the person making the application. (If an unlicensed person makes the application, information must be recorded both for that person and the supervising applicator.)
3. Location of pesticide application
4. Specific name of target pest(s), i.e. insect, weed, or disease
5. Application site, i.e. name of crop or commodity, type of field, type of surface, etc.
6. Day, month, year and time of application
7. Trade name and EPA registration number of the pesticide applied
8. Rate of pesticide applied per unit of measure, i.e. pounds per acre, ounces per 1,000 square feet, etc. For spot treatment, indicate mixture rate.
9. Total amount of pesticide applied to site
10. Area or size of treated site, i.e., acres, cubic feet, square feet, linear feet, crack and crevice, trap or bait placement or spot treatment
11. Method of disposal of any unused, diluted pesticide. If no unused pesticide remained, indicate such.

NDA regulations further recommend that wind speed and direction be recorded along with ambient air temperature, and where applicable, soil, grain and water temperature. It also is recommended that commercial applicators applying general use pesticides for lawn care purposes keep pesticide application records. Information for each required pesticide commercial or noncommercial application must be recorded within 48 hours of the application and kept for a minimum of three years. They may be kept in any format.

Records of commercial applications of any pesticide (GUP or RUP) made to an agricultural production site must be provided to the producer/grower. For the protection of the grower, his/her family and employees, application information, including the restricted entry interval (REI) and personal protective equipment (PPE) required of applicators must be provided to the grower prior to the application. Application records of RUPs custom applied for a grower must either be provided to the grower within 30 days or held on behalf of the grower.

Licensed commercial applicators can hold the records of restricted use pesticide applications for their clients as long as the client has signed a statement stipulating who is holding the records. Commercial applicators should provide their clients with a copy of the signed statement. Commercial applicators must make these records available to their clients

upon request in a timely manner and maintain separate records for each client.

Recordkeeping Requirements — Private Applicators

Private applicators shall maintain records for a period of three years of each restricted use pesticide application and must include the following:

1. Brand or product name and EPA registration number of the pesticide applied
2. Total amount of pesticide applied
3. Location of application; size of area treated, and the crop, commodity, stored product or site to which a pesticide was applied. Location may be recorded using any of the following designations:
 - a. County, range, township, and section
 - b. An accurate identification system using maps and/or written descriptions
 - c. An identification system established by a USDA agency such as the Farm Service Agency or the Natural Resource Conservation Service (with maps or a field numbering system)
 - d. The legal property description
4. Month, day, and year of application
5. Name and certification number of certified applicator who made or supervised the application

Spot treatments — Record Keeping

Restricted use pesticide applications made on the same day in a total area of less than 1/10 of an acre are considered spot treatments. For these applications, the records must include:

1. Brand or product name and EPA registration number
2. Total amount applied
3. Location noted as “spot application” with a concise description of location and treatment; for example, “Spot application, noxious weeds were spot sprayed throughout fields 5 and 6.”
4. Month, day, and year of the application

Since NDA regulations do not specify a time limit for record preparation, federal standards are applied. Therefore, private applicators in Nebraska must prepare RUP application records within 14 days after the application and *must maintain them for a minimum of three years*. Applicators can keep required RUP records in any format.

Access to RUP Application Records

Related sections of FIFRA and the Nebraska Pesticide Act give NDA the authority to inspect private, commercial and noncommercial applicator records and establishments. Authority to inspect private applicators is provided in the 1990 Food, Agriculture, Conservation and Trade Act. Attending licensed health care professionals or those acting under their direction,

USDA representatives, and state regulatory representatives with credentials have legal access to the records. Authorized persons can copy the records, but the licensed pesticide applicator must retain the originals.

Recordkeeping Requirements — Distributors/Dealers

The Nebraska Department of Agriculture requires sellers of restricted use pesticides to hold a Nebraska pesticide dealer's license and to be registered with the NDA. Dealers who distribute restricted use pesticides must keep a record of each transaction involving an RUP for 3 years. These records must be made available for inspection upon request by NDA or EPA. NDA regulations require that such records include:

1. Name and address (residence or principal place of business) of the person to whom the restricted use pesticide was made available. (Note: No dealer may make an RUP available to an uncertified person unless he/she can document that the distribution is to a licensed dealer or the restricted use pesticide will be used by a certified/licensed applicator.)
2. The name and address (residence or principal place of business) of the licensed applicator or dealer who will use the restricted use pesticide, if different from Section 1 above
3. The number on the person's license or dealer license number, the state which issued the applicator certificate, expiration date, and the category of certification, if applicable
4. The product name, EPA registration number, and if applicable, the state special local needs (SLN) registration number on the pesticide label
5. The quantity of pesticide sold
6. The transaction date

Whenever an unlicensed person is making the purchase, EPA recommends that dealers also examine one of the following at the time of sale:

1. The original of the pesticide applicator's license and the driver's license or other identification of the person to whom the restricted use pesticide is made available
2. A photocopy or other facsimile of the applicator's license, a signed statement from the certified applicator authorizing the purchase, and proper identification of the buyer
3. A photocopy or other facsimile of the applicator's license, a copy of a signed contract or agreement between the applicator and the purchaser which provides for the proper use of the restricted pesticides, and the proper identification of the buyer

Violations and Penalties

NDA's pesticide regulations specify a broad range of actions for violations of the Nebraska Pesticide Act. Administrative fines imposed for violations are established using a system of base fines that are adjusted in accordance with gravity of the offense and business size. Base fines range from \$1,000 to \$2,500, depending on the nature of the violation. Base fines for subsequent violations range from \$2,000 to \$5,000, again depending on the violation.

Gravity adjustments are made using numerical factors that increase the seriousness of the violation. The cumulative total of the "gravity values" are used to determine the percentage of base value that will be assessed for a violation. Size of business also is considered in setting the penalty amount. The Nebraska Pesticide Act also includes civil penalties for criminal or repeat intentional violations. These penalties have a maximum of \$15,000 for each violation.

References

University of Nebraska—Lincoln Pesticide Education Resources <http://PestEd.unl.edu>

Nebraska Department of Agriculture Pesticide Program <http://www.agr.state.ne.us/division/bpi/pes/pest1.htm>

Nebraska Pesticide Act and Pesticide Regulations, as amended (Title 25, Chapter 2) <http://www.agr.state.ne.us/regulate/bpi/pes/actbm.htm>

Federal Insecticide, Fungicide and Rodenticide Act, as amended http://www4.law.cornell.edu/uscode/html/us-code07/usc_sup_01_7_10_6.html

USDA Federal Pesticide Recordkeeping Program for private applicators <http://www.ams.usda.gov/science/sdpr.htm>

UNL Extension publications are available online at <http://extension.unl.edu/publications>.

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